

Cheryl R. Winn
Attorney At Law

November 29, 2004

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NOV 29 2004
PUBLIC SERVICE
COMMISSION

Ms. Beth O'Donnell
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

Re: C. Maxwell Brown, Jr., Complainant v. BellSouth Telecommunications, Inc.,
Defendant; PSC 2004-00441

Dear Ms. O' Donnell:

Enclosed for filing in the above-captioned case are the original and ten (10) copies of
Answer of BellSouth Telecommunications, Inc.

Sincerely,


Cheryl R. Winn

cc: Party of Record

Enclosures

560695

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

NOV 29 2004

C. MAXWELL BROWN, JR., M.D.)	PUBLIC SERVICE
)	COMMISSION
COMPLAINANT)	
)	
v.)	CASE NO. 2004-00441
)	
BELLSOUTH TELECOMMUNICATIONS, INC.)	
)	
DEFENDANT)	

ANSWER OF BELLSOUTH TELECOMMUNICATIONS, INC.

The Defendant, BellSouth Telecommunications, Inc. ("BellSouth"), by counsel, for its answer to the complaint of C. Maxwell Brown, Jr., ("Dr. Brown"), states as follows:

FIRST DEFENSE

1. The Complaint fails to state a cause of action upon which relief can be granted.

SECOND DEFENSE

2. With regard to the allegation contained in grammatical paragraph 1(a) of the Complaint, BellSouth states it has no knowledge or information sufficient to form a belief as to the truth or falsity of such allegations.

3. With regard to the allegation contained in grammatical paragraph 1(b) of the Complaint, BellSouth denies the allegation. BellSouth affirmatively states the correct name of the Defendant utility is BellSouth Telecommunications, Inc. BellSouth's corporate headquarters and principal office are located in Atlanta, Georgia. BellSouth's principal place of business in Kentucky is 601 W. Chestnut Street, Louisville, Kentucky 40203.

4. With regard to the allegation contained in grammatical paragraph 1(c) of the Complaint that states that Plaintiff's office was called by BellSouth in November of 2003, offering a "huge deduction" in Dr. Brown's office phone bill, BellSouth admits only that in November of 2003, it offered Dr. Brown its "Key Customer Program Subscriber Election" and that Dr. Brown's authorized agent, Rhonda, office manager, accepted BellSouth's offer on Dr. Brown's behalf. The office manager was listed on the account as the authorized representative of the doctor's office. The term of the contract was for thirty-six (36) months. BellSouth denies all other allegations contained in paragraph 1(c). BellSouth affirmatively states that under the terms of the program the customer received rewards on his monthly bill. Prior to termination Dr. Brown's office received eight (8) months worth of awards which were clearly noted on the monthly bills.

5. Dr. Brown had service disconnected to his office on August 19, 2004. BellSouth sent Dr. Brown a final bill in August of 2004 including termination charges because the contract term had not been fulfilled.

6. In September of 2004, BellSouth received an informal complaint from the PSC concerning the termination charges posted to Dr. Brown's account. BellSouth investigated Dr. Brown's appeal and determined the termination charges were appropriate.

THIRD DEFENSE

7. BellSouth affirmatively states that Dr. Brown authorized Rhonda, office manager, to act as an authorized party with respect to his phone service. Since May of 1996 Dr. Brown's credit information reflects Rhonda in a position of authority for matters pertaining to the service. Rhonda accepted the contract on Dr. Brown's behalf. See Exhibit A, Affidavit of Joan Duncan, Manager, BellSouth Telecommunications, Inc. BellSouth's account notes that business dealings for his practice should be addressed to his office manager, Rhonda. It is well settled that the

principal is liable for the actions of its authorized agent. *May v. Ken-Rad Corp., Inc.*, Ky., 131 S.W.2d 490, 492 (1939). Accordingly, Dr. Brown is bound by the terms of the agreement as agreed to by his agent, Rhonda.

Even if Rhonda were not an authorized agent of Dr. Brown, Dr. Brown ratified her actions by accepting the benefits of the contract on his monthly phone bill for eight months. Dr. Brown's phone bill included line items of "Reward under Complete Choice Hunting" and "Reward under Key Customer Program 2003" and listed a credit amount associated with the program. A principal may later approve or adopt the actions of an "unauthorized" agent by later approving the actions of the "unauthorized" agent. *International Shoe Co. v. Johnson*, Ky., 67 S.W.2d 505, 507-08 (1933). Here, by adopting the benefits of the contract, Dr. Brown also necessarily adopted the liability of the contract. Acceptance of the benefits ratified the contract and Dr. Brown became bound by its terms. Accordingly, Dr. Brown is bound by the contract and its termination provision.

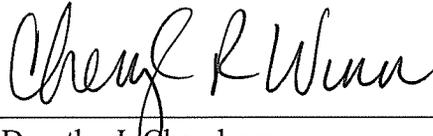
FOURTH DEFENSE

8. BellSouth's Key Customer Program is a tariffed offering and is offered pursuant to the terms and conditions of BellSouth's lawfully filed and approved tariffs. To the extent termination charges arise out of the tariff, BellSouth has a non-discriminatory obligation bill and attempt to collect applicable termination charges.

9. All allegations contained in the Complaint not specifically admitted are denied.

WHEREFORE, BellSouth respectfully requests that this Complaint be dismissed and held for naught and BellSouth be granted any and all other relief to which it may appear entitled.

Respectfully submitted,



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675 W. Peachtree Street, N.E.
Atlanta, GA 30375
Telephone: (404) 335-0841

COUNSEL FOR BELLSOUTH
TELECOMMUNICATIONS, INC.

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

C. MAXWELL BROWN, JR., M.D.)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 2004-00441
)	
BELLSOUTH TELECOMMUNICATIONS, INC.)	
)	
DEFENDANT)	

AFFIDAVIT OF JOAN H. DUNCAN

This Affiant, Joan H. Duncan, after having been first duly sworn, respectfully states as follows ;

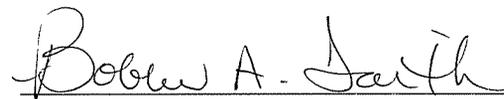
1. I am the Manager of BellSouth Telecommunications, Inc. Regulatory Customer Appeals located at 601 West Chestnut Street, Louisville, Jefferson County, Kentucky.
2. I have reviewed Dr. Brown's account record and his office manager, Rhonda, is listed as the representative with respect to his office phone service.
3. I have also reviewed Dr. Brown's phone bills which included line item credits for "Reward under Complete Choice Hunting" and "Reward under Key Customer Program 2003"

Further Affiant Sayeth Naught.


JOAN H. DUNCAN

SWORN TO AND SUBSCRIBED BEFORE ME THIS THE 29th DAY OF November

2004.



NOTARY PUBLIC
State-at-Large

My Commission Expires: January 4, 2007

BellSouth Key Customer Program Subscriber Election

The undersigned Subscriber desires to participate in the BellSouth Key Customer Program (the "Program"), and agrees to the following:

1. Subscriber is an existing BellSouth Telecommunications, Inc. ("BellSouth") business services subscriber located in Alabama, Kentucky, Louisiana, Mississippi, North Carolina, or South Carolina and has monthly total billed BellSouth regulated charges* (as defined in the applicable BellSouth tariff) at each such location between \$75 and \$3,000 excluding hunting, analog private line and ISDN PRI charges. Subscriber agrees to keep local services with BellSouth under its General Subscriber Services Tariff ("G.S.S.T.") or Private Line Services Tariff for a minimum of two (2) or thirty-six (36) months from the enrollment date in the Program. The enrollment date shall be determined by the first billing cycle date which Subscriber receives the reward as a result of its BellSouth regulated charges as set forth in paragraph 2, below

2. Subscriber agrees to the following term and reward (Check One):

Monthly Billed BellSouth Regulated Charges*	<input type="checkbox"/> Twenty-Four (24) Month Term	<input checked="" type="checkbox"/> Thirty-six (36) Month Term
\$75 - \$3,000.00	10%	15%
Hunting Bonus Reward	50%	100%

The total billed charges consists of end user monthly billed BellSouth regulated charges at qualifying locations excluding nonregulated charges, taxes, late payment charges, charges billed pursuant to federal or state access service tariffs, charges collected on behalf of municipalities (including, but not limited to services for 911 service and dual party relay services), and charges for services provided by other companies.

3. The Hunting Bonus Reward will apply to the Subscriber's recurring charge for the Hunting service commensurate with the term of the election Subscriber chooses. (Hunting is also defined as Rotary Line Service).

4. Participant must be a BellSouth customer at the time of the reward. The applied rewards will appear as a credit in the Other Charges Credits (OC&C) section of the Subscriber's bill in a subsequent billing period, usually within one or two billing cycles. Subscriber will receive the reward associated with Subscriber's monthly total billed BellSouth charges* (as defined in the applicable BellSouth tariffs) for the previous month each state while this term election is in effect. If such charges fall below the minimum charges per month, rewards will not be applied for such locations. Should Subscriber's charges exceed the \$3,000 threshold, the Subscriber will only receive the maximum reward allowed under this Program for charges up to \$3,000. Unless the Subscriber takes other action, all business local service will continue after the election term has expired after which Subscriber agrees to pay full tariffed charges.

5. In the event the Subscriber terminates the term election agreement, the Subscriber must pay to BellSouth a termination charge as provided below for the number of months remaining on such agreed upon term. In addition, the Subscriber shall reimburse all rewards for line connection charges. This termination charge will appear on the Subscriber's final bill as a charge in the OC&C section

Monthly TBR at time of enrollment	Set charge to be multiplied by number of months remaining on term
\$75 - \$149.99	\$25
\$150 - \$3,000	\$40

6. In the event Subscriber changes service locations for business local service, Subscriber shall notify its BellSouth Small Business C to advise of the change in service location.

7. In the event Subscriber is switched without authorization by another carrier for business local service, Subscriber must call its BellSouth Small Business Office to continue the Program once the improperly switched account has been returned to BellSouth.

8. Applicable taxes and fees will be based on the full tariff price of all products and services, and no taxes or fees will be added to the amount of any reward under this program.

9. Subscribers who participate in the promotion and subscribe to new service during the promotional period will receive an additional reward equal to the line connection charges associated with the service order. This will include the line connection charge (first and additional lines, lin equivalents and trunks).

10. This term election is subject to and controlled by the provisions of BellSouth's lawfully filed tariffs, including any changes therein as made from time to time.

SUBSCRIBER Maxwell C. Brown MD
 (Business Name)
 By: [Signature]
 (Signature)
C. Maxwell Brown, M.D.
 Print Name
M.D.
 Title
11-26-03
 Date
 Version 07/502
 Representative Name Lisa Laegman
 Telephone # for Questions

201 S. 5th St.
 (Business Address)
Bardonia Ky 40004
 City/State
502-348-9038
 (Business Telephone Number)
502-348-9039
 (Additional Business Telephone Number(s))
 E-Mail Address (optional)
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